

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

LISA ORLANDO,

Plaintiff,

ORDER

17-CV-2001 (MKB) (CLP)

v.

THE CITY OF NEW YORK and JOHN DOES 1-5,

Defendants.

MARGO K. BRODIE, United States District Judge:

Plaintiff Lisa Orlando, proceeding *pro se*, commenced the above-captioned action on April 6, 2017, against Defendants the City of New York and John Does 1-5. (Compl., Docket Entry No. 1.) Plaintiff asserts claims for assault, battery, false arrest, malicious prosecution, abuse of process, denial of equal protection, and municipal liability. (*See generally id.*) By Report and Recommendation dated June 14, 2018, Magistrate Judge Cheryl Pollak *sua sponte* recommended that the Court dismiss Plaintiff's claims for failure to prosecute (the "R&R"). (R&R 3, Docket Entry No. 21.) For the reasons set forth below, the Court adopts the R&R and dismisses Plaintiff's claims.

I. Background

On April 7, 2017, attorney Harlan Garrett Greenberg, on behalf of the Law Office of Harlan Greenberg, filed a notice of appearance as counsel for Plaintiff. (Notice of Appearance dated Apr. 7, 2017.) On October 25, 2017, Greenberg moved to withdraw as counsel, citing a deterioration of the attorney-client relationship due to his inability to contact Plaintiff. (Mot. to Withdraw, Docket Entry No. 15.) Judge Pollak ordered Plaintiff, her counsel, and Defendants' counsel to attend a conference on November 15, 2017. (*See* Scheduling Order, Docket Entry No.

16.) Plaintiff failed to appear. (Minute Entry dated Nov. 15, 2017, Docket Entry No. 18.) Judge Pollak granted counsel's motion to withdraw. (*Id.*) On December 7, 2017, Judge Pollak ordered Plaintiff to notify the Court in writing by January 5, 2018, whether she had retained new counsel or planned to proceed *pro se* ("December 2017 Order"). (December 2017 Order, Docket Entry No. 19.) Judge Pollak also ordered Plaintiff to attend a status conference on January 24, 2018 and notified Plaintiff that if she failed to appear at the conference she would recommend that the case be dismissed. (*Id.*) A copy of Judge Pollak's December 2017 Order was mailed to Plaintiff on December 7, 2017, at the address she provided to the Court and was not returned. Plaintiff failed to appear at the January 24, 2018 status conference. (Minute Entry dated Jan. 25, 2018.)

On June 14, 2018, Judge Pollak *sua sponte* issued the R&R recommending that the Court dismiss Plaintiff's claims without prejudice for failure to prosecute. (R&R 3.) The R&R was mailed to Plaintiff. No party has objected to the R&R.

II. Discussion

A district court reviewing a magistrate judge's recommended ruling "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). "[F]ailure to object timely to a magistrate judge's report may operate as a waiver of any further judicial review of the decision, as long as the parties receive clear notice of the consequences of their failure to object." *Eustache v. Home Depot U.S.A., Inc.*, 621 F. App'x 86, 87 (2d Cir. 2015) (quoting *United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir. 1997)); *see also Almonte v. Suffolk Cty.*, 531 F. App'x 107, 109 (2d Cir. 2013) ("As a rule, a party's failure to object to any purported error or omission in a magistrate judge's report waives further judicial review of the point." (quoting *Cephas v. Nash*, 328 F.3d 98, 107 (2d Cir. 2003))); *Wagner & Wagner, LLP v. Atkinson, Haskins, Nellis, Brittingham, Gladd & Carwile*,

P.C., 596 F.3d 84, 92 (2d Cir. 2010) (“[A] party waives appellate review of a decision in a magistrate judge’s Report and Recommendation if the party fails to file timely objections designating the particular issue.” (citations omitted)).

The Court has reviewed the unopposed R&R and, finding no clear error, adopts the R&R in its entirety pursuant to 28 U.S.C. § 636(b)(1).

III. Conclusion

For the reasons discussed above, the Court dismisses the action for failure to prosecute. The Clerk of Court is directed to close this case.

SO ORDERED:

s/ MKB
MARGO K. BRODIE
United States District Judge

Dated: November 6, 2018
Brooklyn, New York